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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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10	BERNADETTE HIGHTOWER, <i>on behalf</i> <i>of herself and all others similarly situated,</i>
11	Plaintiff,
12	v.
13	RECEIVABLES PERFORMANCE MANAGEMENT, LLC,
14	Defendant.
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17	LAUREN SHEMEYLA, <i>on behalf of herself</i> <i>and all others similarly situated,</i>
18	Plaintiff,
19	v.
20	RECEIVABLES PERFORMANCE MANAGEMENT, LLC,
21	Defendant.
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2 ALICIA DAMON, *on behalf of herself and*
3 *all others similarly situated,*

4 Plaintiff,

5 v.
6 RECEIVABLES PERFORMANCE
7 MANAGEMENT, LLC,

8 Defendant.

Case No. 2:22-cv-01691-RSM

9 HELEN GOINS, *on behalf of herself and all*
10 *others similarly situated,*

Case No. 2:22-cv-01692-RSM

11 Plaintiff,

12 v.
13 RECEIVABLES PERFORMANCE
14 MANAGEMENT, LLC,

15 Defendant.

16 LATERSHIA JONES, *on behalf of herself*
17 *and all others similarly situated,*

Case No. 2:22-cv-01715-RSM

18 Plaintiff,

19 v.
20 RECEIVABLES PERFORMANCE
21 MANAGEMENT, LLC,

22 Defendant.

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2 DAVID TRISTAN, *on behalf of himself and*
3 *all others similarly situated,*

4 Plaintiff,

5 v.

6 RECEIVABLES PERFORMANCE
7 MANAGEMENT, LLC,

8 Defendant.

9 Pursuant to Federal Rule of Civil Procedure 42(a)(2) and LCR 42(a), Plaintiffs
10 Bernadette Hightower, Lauren Shemeyla, Alicia Damon, Helen Goins, Latershia Jones, and
11 David Tristan (“Plaintiffs”), individually and on behalf of all others similarly situated,
12 respectfully move for an Order consolidating the above-captioned matters: *Hightower v.*
13 *Receivables Performance Management, LLC*, No. 2:22-cv-01683-RSM (“*Hightower Action*”);
14 *Shemeyla v. Receivables Performance Management, LLC*, No. 2:22-cv-01686-RSM (“*Shemeyla*
15 *Action*”); *Damon v. Receivables Performance Management, LLC*, No. 2:22-cv-01691-RSM
16 (“*Damon Action*”); *Goins v. Receivables Performance Management, LLC*, No. 2:22-cv-01692-
17 RSM (“*Goins Action*”); *Jones v. Receivables Performance Management, LLC*, No. 2:22-cv-
18 01715-RSM (“*Jones Action*”); and *Tristan v. Receivables Performance Management, LLC*, Case
19 No. 2:22-cv-01719-TSZ (“*Tristan Action*”) into the first-filed action: the *Hightower Action*.
20 Consistent with LCR 42(b), the undersigned have met and conferred, and are in agreement with
21 this Motion. Defense counsel for Receivables Performance Management, LLC has not yet made
22 an appearance in any of the Related Actions.
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24 These actions arise out of the same operative facts—a targeted cyber-attack that allowed
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a third party to gain unauthorized access to the computer systems housing sensitive consumer data maintained by Defendant Receivable Performance Management, LLC (“Defendant” or “RPM”) that reportedly exposed confidential and sensitive personally identifying information (“PII”) of over 3,700,000 individuals and was first discovered in or around May 2021 (the “Data Breach”). The Related Actions assert similar causes of action, define overlapping classes, and seek similar remedies as against a common defendant. To maximize efficiency and judicial economy, the Court should grant Plaintiffs’ Motion, and consolidate the Related Actions into the *Hightower Action*. Plaintiffs also ask that the Court set a deadline for the submission of motions to appoint lead counsel under Rule 23(g) for 14 days after the issuance of its Order on this Motion, but in no event before January 5, 2023.

I. BACKGROUND

Located in Lynwood, Washington, Defendant is a consumer debt collection company that serves bank, retail, auto finance, telecommunications, media and utilities, commercial finance, and small business industries.¹

The Related Actions each arise out of a targeted cyber-attack that allowed a third party to gain unauthorized access to the computer systems housing sensitive consumer data maintained by Defendant. In the course of its business, Defendant stores and maintains consumers’ sensitive and private information, including Social Security numbers (the “Private Information”). The Related Actions each allege that, as a result of Defendant’s failure to adhere to adequate data security practices, the Private Information of Plaintiffs and over 3,700,000 other consumers across the country was accessed by a malicious actor via a ransomware attack (the “Data

¹ <http://www.receivablesperformance.com/> (last visited Nov. 30, 2022).

1 Breach").

2 Plaintiffs learned they were victims of the Data Breach, and each decided to file their
 3 respective class actions following their receipt of Notice of Data Incident letters from Defendant.
 4 Plaintiff Hightower filed her action in this District on November 28, 2022. Plaintiff Shemeyla filed
 5 her action in this District on November 28, 2022. Plaintiff Damon filed her action in this District
 6 on November 29, 2022. Plaintiff Goins filed her action in this District on November 29, 2022.
 7 Plaintiff Jones filed her action in this District on December 2, 2022. Plaintiff Tristan filed his
 8 action in this District on December 2, 2022. Through their respective class actions, Plaintiffs allege
 9 a combination of the following causes of action against Defendant: 1) Negligence; 2) Declaratory
 10 Judgment; 3) violation of the Washington State Consumer Protection Act; 4) Breach of
 11 Confidence; 5) Negligence Per Se; 6) Breach of Implied Contract; and 7) Invasion of Privacy.
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14 II. LEGAL ARGUMENT

15 A. Legal Standard

16 Rule 42(a) of the Federal Rules of Civil Procedure provides:

17 If actions before the court involve a common question of law or fact, the court may:
 18 (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate
 19 the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

20 Fed. R. Civ. P. 42(a).

21 As the rule states, a motion to consolidate must meet the threshold requirement of involving
 22 "a common question of law or fact." If that threshold requirement is met, then whether to grant the
 23 motion becomes an issue of judicial discretion. *Invs. Rsch. Co. v. U.S. Dist. Ct. for Cent. Dist. of*
24 California, 877 F.2d 777 (9th Cir. 1989). Courts have specifically addressed what factors should be
 25 considered in determining whether a motion to consolidate should be granted: "Factors relevant to
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1 the analysis include judicial economy, whether consolidation would expedite resolution of the case,
 2 whether separate cases may yield inconsistent results, and the potential prejudice to a party opposing
 3 consolidation.” *Pecznick v. Amazon.com Inc.*, No. 2:22-cv-00743, 2022 WL 4483123, at *3 (W.D.
 4 Wash. Sept. 27, 2022) (citing *Chorak v. Hartford Cas. Ins. Co.*, No. 2:20-cv-00627, 2020 WL
 5 8611291, at *1 (W.D. Wash. Nov. 10, 2020)). Furthermore, “[i]f the court determines that common
 6 questions are present, it must then balance the savings of time and effort that consolidation will
 7 produce against any inconvenience, delay, confusion, or prejudice that may result.” *Desert Mech.
 8 Inc. v. Travelers Cas. & Sur. Co of America*, No. 2:15-cv-02298, 2022 WL 1078362, at *3 (D. Nev.
 9 Mar. 14, 2022) (*citing Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984)).
 10

11 **B. Consolidation is appropriate.**

12 The Complaints in the Related Actions arise out of and relate to the same, common
 13 factual allegations and legal theories. The Related Actions assert multiple common causes of
 14 action against the common Defendant relating to the same facts and seek the same or similar
 15 relief in response to the same event: the Data Breach. The Actions seek certification of an
 16 overlapping nationwide class and allege that Class Members suffered harm as a result of the Data
 17 Breach because their PII (including Social Security numbers) was exposed to third parties
 18 without their authorization. The Related actions present the quintessential consolidation scenario,
 19 and the Court should consolidate to ensure judicial economy and preserve party resources.
 20

21 Consolidation of the Related Actions (and any future similar actions alleging claims
 22 relating to the Data Breach) is warranted because it will simplify discovery, pretrial motions, class
 23 certification issues, and other case management issues, especially given that the cases are at their
 24 procedural inception. Consolidation will also reduce the confusion and delay that may result from
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prosecuting related putative class actions separately, including eliminating duplicative discovery and the possibility of inconsistent rulings on class certification, evidentiary motions, and other pretrial matters. It will also decrease the amount of time that would have been otherwise required for three separate cases, as many witnesses would have to necessarily be called in four separate cases. Furthermore, it will foster judicial economy and will not prejudice any party.

Courts consistently find that data breach class actions are particularly appropriate for consolidation. *See, e.g., In re Accellion, Inc. Data Breach Litig.*, No. 21-cv-01155-EJD, 2022 WL 767279, at *3 (N.D. Cal. Mar. 14, 2022) (finding consolidation appropriate in a data breach against a sole defendant); *Kostka v. Dickey's Barbecue Rests., Inc.*, No. 3:20-cv-3424-K (N.D. Tex. Mar. 19, 2021), ECF No. 37 (ordering consolidation of three cases stemming from the same data breach); *Bellwether Cnty. Credit Union v. Chipotle Mexican Grill, Inc.*, No. 17-cv-1102-WJM-STV, 2017 U.S. Dist. LEXIS 142626, at *3 (D. Colo. Sep. 1, 2017) (“[B]oth actions are substantively identical and are in the same stage of litigation . . . arise out of the same occurrence: a data breach . . .”); *Fero v. Excellus Health Plan, Inc.*, 236 F. Supp. 3d 734, 745 (W.D.N.Y. 2017) (noting court had previously “issued an order consolidating . . . pursuant to Federal Rule of Civil Procedure 42(a)(2), and transferred the case” to one judge in large data breach litigation); *McDonald v. PaperlessPay Corp.*, No. 3:20-cv-516-MMH-MCR, 2021 WL 931599, at *5 (M.D.Fla. Mar. 11, 2021) (finding that the data breach litigations presented a number of common factual and legal issues warranting consolidation); *Galaria v. Nationwide Mutual Ins. Co.*, Nos. 2:13-cv-118; 2:13-cv-257, 2017 WL 4987663, at *3 (S.D. Ohio Aug. 16, 2017) (data breach “consolidation is appropriate under the circumstances of these cases and in the interest of expedition and economy”). Accordingly, Plaintiffs respectfully request that the Court consolidate

1 the Related Actions, and any subsequently filed or transferred actions relating to the Data
2 Breach, under the docket number of the first filed case, *Hightower v. Receivables Performance*
3 *Management, LLC*, No. 2:22-cv-01683-RSM.
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5 **C. Briefing Under Rule 23(g)**

6 Counsel for the undersigned Plaintiffs intend to submit competing motions for appointment
7 as lead counsel under Federal Rule of Civil Procedure 23(g). The parties have met and conferred,
8 and they agree that the Court should order that leadership applications be filed 14 days after the
9 entry of the Court's order on this Motion, or January 5, 2023, whichever is later. The parties have
10 further agreed that no response or reply briefs should be permitted on their motions.
11

12 **III. CONCLUSION**

13 For the foregoing reasons, Plaintiffs respectfully request that the Court enter an
14 Order:

15 1. Consolidating the Related Actions against Receivables Performance
16 Management pursuant to Rule 42;
17 2. Leadership applications shall be filed 14 days after the entry of the Court's
18 order on this Motion, or January 5, 2023, whichever is later; and
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20 3. No response or reply briefs on leadership applications shall be permitted.

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1 Dated: December 12, 2022
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